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September 21, 2021

***VIA ECF***

Honorable Richard J. Sullivan  
Second Circuit Court of Appeals Sitting By Designation  
500 Pearl Street  
New York, New York 10007

**RE: United States v. Ernest Murphy  
18-CR-373 (RJS)(11)**

Your Honor,

The undersigned were appointed pursuant to the Criminal Justice Act to represent Ernest Murphy in the above-entitled case. We represented Mr. Murphy in the District Court and in his appeal to the Second Circuit, which by a summary order dated August 27, 2021, affirmed Mr. Murphy's conviction. We write to ask the Court to appoint Mr. Murphy new counsel to assist him in filing a Rule 33(b)(1) motion. The basis of that motion is set forth below.

Prior to oral argument on the appeal—specifically, on June 16, 2021—we asked the Government to confirm the existence of a video of a post-arrest statement allegedly made by Tyquan Robinson on January 5, 2018, after his arrest at 672 Decatur (“Decatur”). We also asked the Government to identify when if ever the Government disclosed that video to us. The Government produced the video to us on or about June 24, 2021, and subsequently confirmed they have no record of ever producing the video to us. In addition, we have reason to believe that the

lead AUSA at the time—Karen Portlock—knew about the video and did not disclose it, in direct violation of Rule 16, this Court’s discovery orders, and *Brady*.

The video itself contains statements that undermine the Government’s theory of the case that Mr. Murphy was tied into the Boss Gang conspiracy led by Tyshawn Burgess in November or December 2017 through his relationship with Mr. Robinson at Decatur. We believe this evidence discovered after trial could not, with the exercise of due diligence, have been discovered before or during trial and is so material and noncumulative that its admission would probably lead to an acquittal. Accordingly, we believe that there is a factual and legal predicate to support a Rule 33(b)(1) motion.

After the Second Circuit issued its summary order, it became clear that Mr. Murphy was (and is) dissatisfied with our representation of him, that certain irreconcilable differences have arisen regarding further appellate action (e.g., filing a motion for rehearing en banc or a petition for a writ of certiorari), the content of the Rule 33 motion, and our overall representation of him. Put plainly, Mr. Murphy stated in no uncertain terms that he no longer wants us to represent him. Therefore, we respectfully request that Your Honor appoint new counsel to Mr. Murphy in order to assist him in filing a Rule 33(b)(1) motion

IT IS HEREBY ORDERED THAT Brooke Cucinella is appointed as counsel pursuant to 18 U.S.C. § 3006A to represent Defendant Ernest Murphy in this matter. Ms. Cucinella shall promptly file a notice of appearance in Case No. 18-cr-373-11. IT IS FURTHER ORDERED THAT Ms. Cucinella shall meet with Mr. Murphy and submit a letter by October 7, 2021 confirming that she has met with Mr. Murphy and setting forth a proposed briefing schedule on Mr. Murphy's contemplated Rule 33(b)(1) motion. Mr. Joyce and Mr. Moore, Mr. Murphy's former counsel, are directed to turn over their file to Ms. Cucinella in a timely manner.

SO ORDERED:  
Date: September 27, 2021   
Richard J. Sullivan  
U.S.C.J., Sitting by Designation

Respectfully submitted,

s/Patrick Joyce

s/Robert Moore